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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MUZAFFAR HUSSAIN, Defendant.	)	Case No. CR-13-408-JST **DEFENDANT MUZAFFAR HUSSAIN'S NOTICE OF MOTION AND MOTION TO DISMISS COUNT 1 FOR BEING OUTSIDE THE STATUTE OF LIMITATIONS** Date: April 13, 2015 Time: 2:00 p.m. Ctrm: 9

TO: MELINDA HAAG, ESQ., UNITED STATES ATTORNEY, AND TO CYNTHIA STIER, ESQ., ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that at the time and place specified above, or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Jon S. Tigar, United States District Judge, the defendant MUZZAFAR HUSSAIN, through his above-listed counsel, will move this Court to dismiss Count I for being outside the statute of limitations.

This request is made pursuant to *Rule 12* of the *Federal Rules of Criminal Procedure*, *26*

U.S.C. § 6531(2), the accompanying declarations, the pleadings and records on file in this matter, and upon such evidence and argument which may be presented prior to and at the hearing on this motion.

Dated: March 6, 2015

Respectfully submitted,

BAY AREA CRIMINAL LAWYERS, PC

By: /s/David J. Cohen
DAVID J. COHEN, ESQ.

Attorneys for Defendant **Muzaffar Hussain**

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UNITED STATES OF AMERICA, Plaintiff, v. MUZAFFAR HUSSAIN, Defendant.	Case No. CR-13-408-JST **DEFENDANT MUZAFFAR HUSSAIN'S MOTION TO DISMISS COUNT 1 FOR BEING OUTSIDE THE STATUTE OF LIMITATIONS** Date: April 13, 2015 Time: 2:00 p.m. Ctrm: 9

I.

STATEMENT OF FACTS

The investigation in this case began as a civil matter on or about March 18, 2006 when the government sought to recover allegedly unpaid employment taxes from Crossroads Home Health Care, Inc. ("Crossroads"), one of the companies with which Mr. Hussain is associated. In August 2009, the government opened a criminal investigation of Mr. Hussain, Crossroads, and several other businesses related to Mr. Hussain including, Horizon Home Health Care

("Horizon"), Sunshine Home Health Care, Inc. ("Sunshine"), Bay Area Medical Day Spa, Inc. ("Bay Area Medical"), and others.

On June 2, 2010, CID Agent Randy Krueger applied for and received search warrants for Mr. Hussain's residence as well as the business addresses of Crossroads, Sunshine, and another company called Angels Hospice. The searches, which effectively authorized the seizure of nearly every document or computer file in each of the respective locations, yielded a massive amount of material including 70- 80 boxes of documents and mirror image scans of 38 electronic devices.

Three years later, on June 25, 2013, the government indicted Mr. Hussain on charges of: tax evasion (based on his personal tax returns) in violation of *26 U.S.C. § 7201* (Counts 1 – 4), filing false tax returns (based on alleged underreporting of gross receipts for Crossroads, Horizon, and Sunshine) in violation of *26 U.S.C. § 7206(1)* (Counts 5 – 17), failure to account for and pay over employment taxes (based on Crossroads quarterly tax documents) in violation of *26 U.S.C. § 7202* (Counts 18-35), and structuring transactions to avoid reporting requirements in violation of *31 U.S.C. § 5324(a)(3)* (Counts 36 – 44).

II.

THE FACTS UNDERLYING THE ALLEGATIONS IN THE INDICTMENT

The government's investigation of Mr. Hussain ostensibly began as a matter of simply collecting unpaid employment taxes. From 2006 until 2009, Mr. Hussain met with and cooperated with revenue officers in accounting for his personal and corporate tax liabilities and paying some portion of them. In 2008, Mr. Hussain filed a number of amended returns for the previous years that, according to the government, show additional amounts of employment taxes not reflected in the tax forms he previously filed. Over time, the civil investigation morphed into a criminal one led by Agent Krueger.

In the tax related counts, the government primarily alleges that Mr. Hussain under reported the amount of his corporations' gross receipts and employment taxes during the years 2004 through 2008. Additionally, the government claims that, between March 6, 2010 and May 24, 2010, Mr. Hussain engaged in a number of bank transactions allegedly structured so as to avoid the reporting requirements imposed upon banks pursuant to *31 U.S.C. § 5313(a).* These structuring charges are temporally and factually unrelated to the tax violations alleged in Counts 1 – 35.

The Indictment does not identify the source of the government's information regarding the omitted gross receipts. Instead, the government included a separate chart for each entity in which it alleged amounts of the supposed omissions: $2,890,025 for Crossroads (2004 – 2008), $1,025,915 for Horizon (2004 – 2006), and $2,167,014 for Sunshine (2004 – 2008). Counts 3 and 4 are, by the language employed in each, based upon the same omissions of gross receipts, but pertain to Mr. Hussain's personal income tax returns. Likewise, although phrased without the specific reference to the gross receipts, Counts 1 and 2 allege that Mr. Hussain underreported the net income from his businesses on his personal tax returns, but provide no further detail as to the allegations.

Counts 18 through 35 relate to claims that Mr. Hussain underreported and failed to pay employment taxes for Crossroads from Q3 2004 until Q4 2008. The Indictment specifies neither the government's theory as to the nature of the deficiencies nor the manner in which the government calculated the alleged values.

The structuring charges relate to transactions made in March through May of 2010 in which Mr. Hussain allegedly made multiple bank transactions (all withdrawals) that amounted to less than $10,000 on the same day or in close proximity to each other.

III.

ARGUMENT

A. This Court should dismiss Count 1 of the indictment because, as pleaded, it falls outside the six year limitations period.

When evaluating whether a charged offense falls outside the statute of limitations, the court must look only to the four corners of the indictment and accept as true the factual allegations therein. *See United States v. Richards*, 2012 U.S. Dist. LEXIS 151606, 5 (E.D. Cal., 2012) "In ruling on a pre-trial motion to dismiss an indictment, 'the district court is bound by the four corners of the indictment.'" [quoting *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002)]; *see also United States v. Williams*, 2014 U.S. Dist. LEXIS 75566, 5 (D.C. Nev, 2014).

The government filed the Indictment in this case on June 25, 2013. The statute of limitations for tax evasion is six years. *26 U.S.C. § 6531(2)*. Prior to the filing of the Indictment, the parties stipulated to exclude the period the time between December 14, 2012 and June 14, 2013 from the limitations period. Adjusting for this stipulation, which tolled the statute of limitations for approximately six months, renders December 25, 2006 the operative date for purposes of the statute of limitations.

Count 1 specifically alleges that the offense occurred "on or about April 17, 2006." The government filed its Indictment approximately eight months after the limitations period expired for the charges reflected in Count 1. The government made no additional allegations in Count 1 that would resurrect the offense. On its face, Count 1 of the Indictment contains no facts sufficient to bring it within the limitations period and must, therefore, be dismissed.

IV.

CONCLUSION

For the foregoing reasons, this Court must dismiss Count 1 because the conduct alleged in the Indictment occurred outside the limitations period.

Dated: March 6, 2015 Respectfully submitted,

BAY AREA CRIMINAL LAWYERS, PC

By: /s/David J. Cohen

DAVID J. COHEN, ESQ.

Attorneys for Defendant **Muzaffar Hussain**